PETITION TO PERMIT LEGAL ACADEMICS TO PRACTICE LAW

I. Introduction:

Unlike a number of other common law countries, Indian law appears to prohibit academics from engaging in any "practice" of law. For such practice requires one to be enrolled with the Bar Council of India.

The Bar Council rules state that "full time" employment makes a law graduate ineligible to remain on the rolls. More specifically, Rule 49 of Chapter II of Part VI of Bar Council of India Rules states:

> *"An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment."*

In other words, only advocates on the rolls of the Bar Council are entitled to "practice" law, an expression which includes "not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion.[1]

By virtue of Rule 49, a person is barred from being on the rolls if he/she is a full-time salaried "employee". Consequently, many argue that legal academics employed by educational institutions are not entitled to "practice" law. This petition/note argues that there is some flexibility in interpreting this rule to suggest that academics are not necessarily barred from practicing the law.

II. Rationale Behind Rule:

The rationale behind the above alleged prohibition is best expressed by the Bombay High Court in *Birhanmumbai Mahanagarpalika v. The Secretary, Bar Council of Maharashtra and Goa.*[2]

> "The rationale underlying Rule 49 of the Bar Council of India Rules is that employment in a fulltime salaried capacity detracts from the primary role of an Advocate as an independent professional who is subservient to none else than the cause of justice. A conflict of

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[1] *Bar Council of India v. AK Balaji and Ors.*, AIR 2018 SC 1382

[2] Brihanmumbai Mahanagarapalika and Ors. V. The Secretary, Bar Council of Maharashtra and Goa and Ors., 2013 (2) ABR 1038.

duties and interest may arise. A member of the Bar engaged on behalf of a client is expected to utilise his or her knowledge, experience and professional skill in an objective and fair presentation of the case of a client. In doing so, an Advocate does not cease to possess a sense of professional autonomy accompanied as it is by a duty towards the cause of justice… Adversarial battles between litigating parties involve not only the parties and the lawyers who represent them, but there is above all, a commitment to the cause of justice that the institution of the Court embodies. Lawyers have traditionally been regarded as officers of the Court precisely for this reason.

At one level, this is based on the principle that the conduct of a lawyer even when he or she represents a client must be consistent with the need to secure justice. The reason why a full-time salaried employee is handicapped in performing that role is because as an employee, the paramount concern is to protect the interest of the employer. A lawyer who is engaged by a client is undoubtedly engaged to pursue the case of the client. But the difference between a professional who holds a brief and a full-time salaried employee is not merely one of degree. A full-time salaried employee is subject to administrative control of the employer and is answerable to the employer for every aspect of the work rendered in the course of employment. A full-time salaried employee receives a prescribed salary, is borne on the establishment of the employer and is subject to the disciplinary jurisdiction of the employer.

Within the service, the prospects for career advancement are determined by the employer on the recommendations of a Departmental Promotion Committee. They are subject to the hierarchies of service. Such a position may, therefore, involve the employee in a conflict of duties and interest."

As can be seen from the above, the rationale behind Rule 49 hinges on 3 salient aspects:

i) Independence of Lawyers
ii) Potential Conflict of Duties qua employment
iii) Ability to represent clients to the fullest possible extent

Though inter-related, each of these rationales are discussed in turn to demonstrate why permitting law teachers to practice law (within reasonable bounds) will not in any way prove prejudicial to the underlying logic of the Bar Council rule.

III Independence:

In *Birhanmumbai Mahanagarpalika v. The Secretary, Bar Council of Maharashtra and Goa,*[3] the Bombay High court grappled with the issue of whether or not a law officer of a municipal corporation was barred under Rule 49 from being on the rolls. The court ruled in pertinent part that the distinction between an advocate and full-time employee is that the full-time employee continues to remain "*subject to the administrative control of the employer and is answerable to the employer for every aspect of the work rendered in the course of employment*" and therefore, would not be able to fearlessly carry out the work of an advocate.

It is here that one ought to strike a distinction between academics and other regular employees, at least in so far as their "independence" to represent a client in court or practice law is concerned. Academics enjoy a high degree of autonomy and freedom, unlike most other employees. Apart from their allotted teaching hours and certain administrative duties, a lot of academic work is self-driven, comprising as it does of research and writing. As rightly noted by a commentator, academia has very little "coercion, control and steering from above".[4]

Academic freedom broadly includes the freedom to study, teach, research and write.[5][6] It also includes the freedom to engage in activities closely aligned with the main educational endeavour. As noted in a UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) (hereinafter the Recommendation):

"Higher-education teaching personnel have a right to undertake professional activities outside of their employment, particularly those that enhance their professional skills or allow for the application of knowledge to the problems of the community, provided such activities do not interfere with their primary commitments to their home institutions in accordance with institutional policies and regulations or national laws and practice where they exist."[7]

Indeed, a number of educational institutions permit their academics considerable flexibility in working hours, functional autonomy and intellectual freedom.[8]**.** Furthermore, in a number of countries, academics are privileged with tenure which bolsters their independence even more.[9]

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[3] Id.
[4] Jurgen Enders, Christine Musselin, *Back to the Future? The Academic Professions in the 21st Century,* Higher Education to 2030 (Vol. 1): Demography, OECD, pp. 125-150, 2008.
[5] Jogchum Vrielink et al., *Academic Freedom as a Fundamental Right,* Procedia Social and Behavioral Sciences (Jan. 21, 2019, 1:30 PM), https://www.sciencedirect.com/science/article/pii/S1877042811001790
[6] *Recommendation concerning the Status of Higher-Education Teaching Personnel,* UNESCO (Jan. 21, 2019, 1:30 PM), https://unesdoc.unesco.org/ark:/48223/pf0000113234.page=2
[7] Id.
[8] For example: Jindal Global University has similar provisions in place; *JGU Faculty Handbook* (Jan. 21, 2019, 2:00 PM) http://qualityassurance.jgu.edu.in/sites/default/files/jgu_faculty_hand_book_2017.pdf

While Indian academics may not enjoy as much freedom as their Western counterparts, there is no gainsaying the fact that when compared with other full-time professionals, Indian academics enjoy far greater freedom and autonomy.

From all the above, it is logical to infer that academics can be trusted to be objective and independent whilst representing clients. The mere fact of them being "employed" is, in itself, not sufficient to deem them unworthy of independently representing clients and fighting their causes.

This proposition derives some support from *Deepak Aggarwal v. Keshav*[10] where the Supreme court held that despite being "employed" by the government, district attorneys were eligible to continue as "advocates". As the court rightly put it:

"The factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate..."

Therefore, there is no "absolute" prohibition against all "employees" from practising law. Rather as evident from the court ruling above, the prohibition applies mainly to those whose terms of employment would necessarily conflict with their capacity to independently represent clients.

The teaching of law and the practice of law (whether in courts or otherwise) are synergistic in nature and there is nothing incongruent about a law professor performing both roles. Rather, by advocating client causes and consulting in their respective areas of legal specialisation, law professors would only be furthering the mission of education more effectively. This point dovetails into the issue of whether or not there is a potential conflict, as elaborated upon below.

IV Potential Conflict

The second related rationale flowing from Rule 49 is that an employee is necessarily conflicted when it comes to representing clients independently and to their fullest extent. As already discussed earlier, this rationale does not sit well with legal academics who are distinct from most other employees in terms of the level of autonomy and independence they enjoy. Indeed, they are quite distinct from other professionals such as doctors, whose professional commitments could conflict with their engagement as a lawyer as was pointed out by the court in *Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra and Goa*[11], where a medical

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[9] Ralph S. Brown, Jordan E. Kurland, *Academic Tenure and Academic Freedom,* Law and Contemporary Problems (Jan. 21, 2019, 2:00 PM), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4059&context=lcp

[10] Deepak Aggarwal v. Keshav, (2013) 5 SCC 277

[11] Haniraj L. Chulani v. Bar Council of Maharashtra and Goa, AIR 1996 SC 1708

practitioner, was refused enrollment by State Bar Council of Maharashtra and Goa under the Advocates Act, 1961.

While upholding the decision of the State Bar Council, the court ruled that an advocate must devote full-time and attention to his profession; as must a practicing doctor. A person who is both a practicing doctor and a lawyer will be unable to do justice to either of their professional commitments. Highlighting the ensuing conflicts from these two distinct set of professional commitments, the Hon'ble court noted:

> *"...he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will, instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth....Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law.."*

Contrast this with the present case, where there is no real conflict between the core aspects of a lawyer's professional commitment and those of a law teacher. Legal knowledge forms the bedrock of both pursuits and a synergy between these two domains can only help. Academic expertise brought into courts will enrich the practice of law, as will practical (advocacy) expertise that is brought into the classroom. More so in this era of clinical legal education, a point expanded later in this note.

V Advocacy to the fullest possible extent

Could one argue that a law professor must necessarily devote all of his working time to the pursuit of the practice of law in order to be eligible to remain on the rolls? Not at all. This is made clear by the recent decision of the Supreme court in *Ashwini Kumar Upadhyay v Union of India*[12] , where members of Parliament (MP's) were permitted to practice law. The petitioner argued that legislators should be treated as employees of the government, given that they were paid emoluments under The Salary, Allowances and Pension of Members of Parliament Act, 1954. Further, he also argued that both the jobs, that of an advocate and legislator, are full-time engagements, and as per Rule 49 of the BCI rules, there is an express restriction on advocates to take up other employment. Additionally, this could result in a potential conflict of interest in that a member of Parliament might have to sit in judgment over whether or not to support an impeachment motion against a judge.

[12] Ashwini Kumar Upadhyay v. Union of India and Ors., AIR 2018 SC 4633

The Court disagreed, observing that there is no employer-employee relationship between the government and the legislators.[13] Importantly, the court appears to have taken note of the fact that MP's have other duties as well, and could not possibly spend all their working hours representing clients. Therefore, Rule 49 ought not to be interpreted to mean that one must necessarily devote all of his/her working hours to the practice of law. Rather, so long as the nature of the two professional pursuits do not pose a conflict serious enough to compromise one's independence and autonomy, there ought to be no bar against the practice of law for legislators. This logic should extend to law teachers as well.

In fact, it is well-nigh impossible to police "full-time" lawyers to ensure that all of their working hours are spent on client matters. In fact, the Advocates (Right to Take up Law Teaching Rules), permits lawyers to "teach" part time at law universities. So liberal is this provision that lawyers could teach up-to 21 hours a week, without risking losing their license. It bears noting that even full-time law faculty do not have to teach for 21 hours a week. [14] Rather, an Assistant Professor is required to devote only 16 hours per week for direct teaching-learning; and associate professor/professor 14 hours a week.

The teaching exception appears to be designed to enrich the process of legal education by ensuring that competent lawyers share their knowledge and skill sets with students in the classroom. This provision could also help lawyers hone their presentation skills and gain more clarity on legal concepts through debate/deliberation in a classroom.[15] Unfortunately however, what's sauce for the goose is not sauce for the gander. While lawyers can teach up to 21 hours a week, there is no corresponding provision permitting law professors to practice.

This despite the fact that such a norm will only serve to better the process of legal education overall i.e. permitting a teacher to engage with courts or the practice of law will greatly sharpen their knowledge/skill sets and in turn benefit the students whom they teach. Further, it will also enhance the quality of justice by bringing in an in-depth academic perspective to courts.

Court room contribution by Academics:

Legal academics have made significant contributions to the Court Room in various capacities over the years. Illustratively, Professor Upendra Baxi played a monumental role in pursuing justice for the victims of the Bhopal gas tragedy, both through his engagement with the litigation and through

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[13] Id.

[14] See UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018

[15] Erwin Chemerinsky, *The Ideal Law School for the 21st Century* (Jan. 21, 2019, 2:15PM), https://www.law.uci.edu/lawreview/Vol1No1Articles/chemerinsky.pdf ; Amy Cohen, *The Dangers of the Ivory Tower*, 50 Loy. L. Rev. 623 (2004).

writing/research and advocacy.[16]Other academics have served as amicus curiae in several important cases and continue to do so.[17]

Further, a number of judges cite academic scholarship, including in landmark decisions such as Justice K.S. Puttuswamy (Retd.) v. Union of India[18], Joseph Shine v. Union of India[19] and Navtej Singh Johar & Ors v. Union of India & Ors.[20]

It also bears noting that some of the most renowned lawyers/judges boasted significant academic experience, which no doubt bolstered their proficiency in the law and made them better professionals. Shri Nanabhoy Palkhivala (GLC, Mumbai), Shri Ram Jethmalani (GLC, Mumbai), Dr. Aman M. Hingorani (ILI, Delhi & Delhi University), Justice D.Y. Chandrachud (University of Mumbai), Justice M.C Chagla (GLC, Mumbai) are just a few names. Most importantly, the first law minister of India and the Father of Indian Constitution, Dr. B.R Ambedkar, was also an academic and the former principal of Government Law College, Mumbai.

In fact, the Constitution itself recognises the valuable role of an academic in court by providing in Article 124(3)(c) for the appointment of a reputed jurist to the highest court of the land, namely the Indian Supreme court.

VI Regulatory Safeguards:

A key concern about permitting law professors to represent clients is the fear that this would prejudice classroom teaching, since law professors would spend more time in courts. However, this fear is more imagined than real in today's context, given the various regulatory safeguards/norms at the university.

Indeed, Universities are best placed to determine the quantum of time that a law teacher ought to spend on allied activities (such as legal practice, legal aid etc). Universities could even place reasonable restrictions in relation to the type of cases to be taken up by academics (mainly public interest or those in their immediate area of specialisation),

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[16] Sudhir K. Chopra, *Multinational Corporations in the Aftermath of Bhopal: The Need for a New Comprehensive Global Regime for Transnational Corporate Activity*, 29 Val. U. L. Rev. 235 (1994).
[17] Mithlesh Kumar Kushwaha v. State IV (2015) CCR 261 (Del.);
Prashant Reddy, *A Successful Academic Intervention Before the Supreme Court in the Novartis-Glivec Patent Case, (Jan. 21, 2019, 3:00 PM),* https://spicyip.com/2012/11/a-successful-academic-intervention.html;
Abhyudaya Agarwal, *Indian Professors as Amicus Curiae, Industry-Academia Divide and Birth of the Practictioner Academic,* (Jan. 21, 2019, 3:00 PM), http://startup.nujs.edu/blog/indian-professors-as-amicus-curiae-industry-academia-divide-and-the-birth-of-the-practitioner-academic/.
[18] Justice (Retd.) K.S. Puttuswamy and Ors. v. Union of India and Ors., (2017) 10 SCC 1.
[19] Joseph Shine v. Union of India, AIR 2018 SC 4898
[20] Navtej Singh Johar and Ors. v. Union of India and Ors., (2018) 10 *SCC* 1.

number of cases to be taken at a particular point in time, number of hours etc.

Similarly, one must not forget that it is the client who engages an advocate. A client who believes that a law professor may not do justice to his case on account of paucity of time/other engagements etc can choose not to engage such a law professor. Additionally, in the event that a law professor fails to adequately represent his client, the client can sue for compensation under the Consumer Protection Act, 1986. And move against the said lawyer under the Bar Council norms as well. [21]

Lastly, it is now clear from judicial decisions that the practice of law is not merely confined to practice before courts of law, but includes "*non-litigatious*" practice as well.[22]

Therefore, legal consultancy of any sort (e.g. issuing legal opinions at the behest of a client) will invariably amount to the practice of law. Such legal consultancies are permitted under UGC norms.[23] In fact, UGC regulations stipulate that academics who engage with consultancy projects and sponsored projects are entitled to a greater research "score".[24]

In consonance with the above, law schools and law professors engage in various kinds of consultancies.[25] Such consultancies not only add to the overall proficiency of teachers in contextualising the law and engaging with it outside the classroom, it also brings in additional revenue for the law professor and the institution. As the National Knowledge Commission rightly notes: "To foster quality and create better incentives, there is also need to remove fetters on faculty that pertain to opportunities in legal practice (such as consultancy assignments and legal practice in courts)."[26]

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[21] Section 35 of the Advocates Act, 1961 specifically enables the State Bar Council to refer any such case to a disciplinary committee. Chapter I of Part VII of the Bar Council of India Rules further provides for the procedure of conducting the complaint proceedings against the Advocate before the Disciplinary Committee.

[22] Supra Note 1. The court held that the practice of law includes "litigation as well as non-litigation."

[23] Regulation 9.1, UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018.

[24] The "score" signals out the competence of an academic and eligibility for promotions etc. For example, to be eligible for the position of Associate Professor, an individual is required to have a total research score of 75 (Regulation 4.1 (II)(iii), UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018).

[25] See for example, *Consultancy Projects Details,* National Law School of India University, Bangalore (Jan. 22, 2019, 2:30 PM), https://www.nls.ac.in/resources/year2018/consultancyprojects.pdf

[26] *National Knowledge Commission Report to the Nation,* Government of India 40 (2007), http://www.dauniv.ac.in/downloads/NKC_Report07.pdf

Indeed, a more active engagement with legal practice enables academics to be better teachers and paves the way for better clinical education, a point discussed below.

VII Clinical Legal Education

Fortunately, a number of Indian universities have begun investing in clinical legal education. This helps bridge the gap between the theoretical underpinnings of the law and its practical working on the ground. It helps create a more practice ready law student, apart from enabling a more rounded/holistic legal education. Unfortunately, a number of Indian universities are yet to implement clinics in their fullest sense. This requires a serious effort and investment in finding the right set of people with a significant background in the practice of law who are able to integrate into a university set up and conduct a clinic. It also requires formulating a pedagogy that provides for assessing learning outcomes and evaluation.

Clinics are not narrow conceptions but admit of a wide array of options. Narrowly defined, they could encompass the traditional public interest law clinic and legal aid[27] More widely, they could advise start ups on their business and protecting their IP.[28] Clinics could also produce policy papers to guide policy makers.[29] Clinics could be broad based or subject matter specific. In the US, for example, clinics are often specialised and subject matter specific, such as the Emmett Environmental Law and Policy clinic at the Harvard Law School.[30]

Clinics could also be more broad based and encompass community empowerment and education more broadly. Illustratively, the Cross-National Rural Governance and Human Rights Clinic organized jointly by Jindal Global Law School and Cornell University involved visits to the villages to address the issues faced by the villagers[31]. As part of their

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[27] Illustratively, see https://www.law.upenn.edu/clinic/lawyering-in-the-public-interest.php

[28] The International Intellectual Property (IP) Law Clinic, a collaborative effort between Detroit Mercy Law (USA) and Windsor Law (Canada) is one of the most advanced IP clinical programs in North America, providing an opportunity to the senior law students to gain practical experience in IP law by working with local inventors and startups. See http://www.epicentreuwindsor.ca/international-ip-law-clinic-is-a-great-resource-for-startups-seeking-legal-ip-help/

[29] University of California, Berkeley runs a Policy Advocacy Clinic for law and public policy students. The focus is on non-litigation strategies to address various systemic issues. As part of their clinical experience, students conduct legal and social science research and analysis, work with various community stakeholders including public officials, academics etc. and work on written assignments on behalf of their clients/partners; See https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/

[30] *Emmett Environmental Law and Policy Clinic,* Harvard Law School (Jan. 21, 2019, 2:30 PM), https://hls.harvard.edu/dept/clinical/clinics/emmett-environmental-law-and-policy-clinic/

[31] Kalantry, Sital; Brundige, Elizabeth; Gupta, Priya S.; Cornell Law School. International Human Rights Clinic; and Jindal Global Law School. Good Rural Governance and Citizen Participation Clinic, "Promoting Clinical Legal Education in India: A Case Study of the

clinical experience, the students interviewed various community members about their grievances, discussed with them the available avenues for dispute redress, and even assisted them with approaching the government bodies or filing complaints/petitions under the Right to Information Act.

Some clinics also attempt to simplify the law for the common man[32] .

As such, clinics go well beyond the traditional understanding of legal aid and will potentially encompass almost all areas of legal practice. Barring legal academics from legal practice does great disservice to the idea of clinics and the need to integrate some practical training within the overall curricula of legal education. More so in a country like India where we suffer a shortage of resources, and law schools may find it easier to deploy regular faculty members to integrate a clinical approach in their classrooms, rather than hiring experienced practitioners to run full-time clinics, as is the case with the US.[33]

It has also been noted by an academic that practical know-how of legal practice in the form of clinical legal education and legal aid has also suffered on account of inability of law professors to practice.[34] She observes, "Practical training and clinical legal education in India are affected by the fact that full-time law faculty cannot practice law…. a ban that affects teachers' ability to supervise legal aid by students."[35]

A study observed that even with several legal aid clinics at law schools, access to justice for the marginalised was still a distant dream. One of the key impediments was that students and faculty were not allowed to represent clients in Courts of Law. The study therefore recommended that final year LL.B. students and faculty be allowed to represent clients before Courts of Law observing as follows, "*Advocates Act enabling senior law students and Clinical law professors to represent indigent client in the Court would substantially increase access to justice to the poor.*"[36] In this regard, the report has also referred to Justice Krishna Iyer's Report, 'Processual Justice to the People: Report of the Expert Committee on Legal

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Citizen Participation Clinic" (2012). Cornell Law Faculty Publications. Paper 1401. http://scholarship.law.cornell.edu/facpub/1401

[32] See College Legal Aid Clinic of Indian Law Society, https://www.livelaw.in/clinical-legal-education-part-ii-models-clinical-legal-education-india/

[33] Clinical professor or professor of practice refers to those professionals who are appointed by universities as an academic to facilitate practical training of professional students. In the US, most law schools have dedicated clinical professors (with vast practice experience) to run legal clinics. While some schools offer tenure track to clinical professors, others offer them long-term employment contracts.

[34] Jane E. Schukoske, *Legal Education Reform in India: Dialogue Among Indian Law Teachers*, 1 Jindal Global L. Rev. 261, 265 (2009)

[35] Id.

[36] *Access to Justice for Marginalized People. A Study of Law School Based Legal Services Clinic,* GOI and UNDP, (Jan. 21, 2019, 2:45 PM), http://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_schoolbasedlegalservicesclinics.html

Aid 1973' which recommended similar amendments in the Advocates Act.[37]

It bears noting that in *Anees Ahmed v. University of Delhi*[38], the Delhi High Court, while deciding the issue of whether a legal academic could enrol himself as an advocate and appear in a court of law, erroneously assumed that the above recommendation of Justice Iyer had already become law. Unfortunately, the court missed the fact that this was still a mere proposal and has not, till date, been legislated upon.[39] To this extent, the courts' findings on this count will count as per incuriam and ought to be discounted.

VIII Legal Academics in Courts- A Comparative Position

Unlike India, a number of countries permit legal academics to practice in courts. Particularly, common law countries that have a shared legal traditional with India. We highlight some of the prominent ones below.

1. United States- In the United States, it is common for full-time professors to occasionally practice in courts, with some of them being part of very high-profile cases.[40] Illustratively, Professor Laurence Tribe of Harvard Law School argued a seminal gay-rights case (*Bowers v. Hardwick)* way back in the 1980s.

   Similarly, in *People of the State of California v. O.J Simpson* (1995), one of the most famous murder trials in the American history, the defence team included Professor Alan M. Dershowitz of Harvard Law

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[37] Justice Krishna Iyer'sReport recommended an amendment in the Advocates Act, 1961 by way of adding Section 33-A to the Act:
"Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any Court or Tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:-

i. Teachers of a Law School which provides full time instruction for the profession LL.B. degree and which maintains a Legal Aid Clinic as part of its teaching programme where poor persons receive Legal Aid, advice and related services;
ii. Students of third year LL.B. class of Law School (fifth year of LL.B in case of 5 years course) as aforesaid who are participating in the Clinics activities and who have been certified by the Dean/Principal of the Law School under rules made therefore by the Law School.

Provided such representation in the case of students shall be under the supervision of lawyers associated the said Legal Aid Clinic and with the approval of the judge in whose Court the student appears.
Explanation—The supervising lawyer who shall be an Advocate under this Act is presumed under the last preceding provision to assume personal professional responsibility for the nature and quality of the students' legal services."

[38] Anees Ahmed v. University of Delhi, AIR 2002 Delhi 440

[39] The Court in relevant part observed as follows: "*Reference was also made to the provisions of Section 33-A of the Advocates Act which was brought in by way of an amendment suggested by the Bhagwati Committee, which reads as follows:…..*"

[40] Tim Wu, *Did Laurence Tribe Sell Out?* The New Yorker, (Jan. 21, 2019, 7.00 PM), https://www.newyorker.com/news/news-desk/did-laurence-tribe-sell-out

School, and Gerald Uelmen who was then the Dean of School of Law at Santa Clarita University.

Such part-time practice by academics are regulated by universities. For example, Stanford University makes clear that a faculty member can be involved in professional activities for normally thirteen days per quarter.[41]

United Kingdom: In the UK too, it is common for legal academics to be involved in the practice of law, either by appearing in court or offering consultancy services to law firms. It is fairly common for law professors to be practising barristers and even serve as Queen's Counsel (QC). Professor Dan Sarooshi of Oxford Law School was appointed as QC in 2018 and argued the Brexit Case in the Supreme Court.[42] Professor Surya P. Subedi of University of Leeds is a practising barrister having made significant contributions to several human rights cases and having served as an honorary QC.[43]

Here again, it is the university that regulates such practice or outside activities.[44]

2. Canada- Canada has a similar system in place, where law professors can represent clients in courts.[45]

In addition to the above, a number of other countries (such as Singapore, South Korea, Germany etc) permit legal academics to practice in courts. They also encourage full-time attorneys to teach in law schools.

Even a country like China with a legal sector that privatised only in the late 80's permits professors to practice. Under Article 12 of the Law of

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[41] *Faculty Policy on Conflict of Commitment and Interest*, Stanford University, (Jan. 21, 2019, 7.00 PM), https://doresearch.stanford.edu/policies/research-policy-handbook/conflicts-commitment-and-interest/faculty-policy-conflict-commitment-and-interest. Similarly, Harvard University makes clear that any such advocacy on behalf of a client remain secondary to serving the university's academic mission. See Tim Wu, ibid 40.

[42] *Faculty appointments to the Queen's Counsel 2017-18*, University of Oxford, (Jan. 21, 2019, 7.00 PM), https://www.law.ox.ac.uk/news/2018-01-08-faculty-appointments-queens-counsel-2017-18;

[43] Profile, *Professor Surya P. Subedi.*, (Jan. 21, 2019, 7.10 PM) https://essl.leeds.ac.uk/law/staff/231/professor-surya-p-subedi-qc-obe-dphil-oxford-barrister;

[44] The University of Oxford requires that academics participating in "outside" activities (including businesses, consultancy, outside academic appointments etc) requires prior approval from the Head of the Department. *University of Oxford Conflict of Interest,* (Feb. 12, 2019, 5:30 PM), https://researchsupport.admin.ox.ac.uk/governance/integrity/conflict/examples

[45] Gail J. Cohen, *The Top 25 Most Influential*, Canadian Lawyer, (Jan. 21, 2019, 7.10 PM) https://www.canadianlawyermag.com/author/gail-j-cohen/the-top-25-most-influential-1273/

People's Republic of China on Lawyers[46], a person who is engaged in teaching of or research in law in an institution of higher learning, upon the consent of the unit where he works, can apply for practice of law as a part-time lawyer, provided he meets the other pre-requisites under the Act.

One must appreciate that law is not a purely theoretical discipline; therefore, a teacher's practical experience in courts can greatly contribute to the value of legal education overall.[47] And vice versa in terms of having legal practitioners contribute to legal education. Such synergies are critical for fostering a more engaged and holistic legal ecosystem.

VII Clarifying/Amending the Rule

Given all of the above arguments, the current norm prohibiting Indian legal academics from the practice of the law ought to be clarified and/or amended as appropriate. As noted earlier, courts have, in the past, read down the absolute prohibition against all "employees"[48]. Rather such prohibition kicks in only when there is likely to be a significant conflict of interest, that works to the detriment of courts and clients. With law professors, any such practice will, far from conflicting with the enterprise of legal education, only enrich and make it better.

In this way, the spirit of the prohibition is respected, but its rigid technicality is read down to serve the larger interests of society, legal education and justice.

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[46] *Law of the People's Republic of China on Lawyers*, (Jan. 21, 2019, 7.00 PM), http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm

[47] *Should Law Professors Take Part-Time Jobs*? Beijing Review, (Jan. 21, 2019, 7.00 PM) http://www.bjreview.com/Opinion/201707/t20170724_800100914.html

[48] Supra Note 10.